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Committee

Transatlantic Trade and Investment Partnership

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Business, Innovation and Skills Committee

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Summary

The Transatlantic Trade and Investment Partnership is an ambitious attempt by the European Union and the United States to deliver a comprehensive trade and investment treaty.

Negotiations between the two are currently underway and the Government hopes that an agreement can be reached by the end of 2015. The trade deal may be beneficial to the UK and EU economies but TTIP is not universally supported and the level of financial benefit to the UK is open to question. The lack of detail available on the negotiations means that it is difficult to assess which is the more accurate argument. However, this should not excuse the quality of debate which we have, on occasion, observed by campaigners and lobbyists on both sides of the argument. Everyone involved in the debate on TTIP—campaigners, lobbyists, the UK Government and the European Commission—must ensure that an evidence-based approach is at the heart of any TTIP debate.

One of the key concerns about TTIP is the proposal to include Investor State Dispute Settlement (ISDS) provisions. These provisions—common in bilateral trade agreements—aim to protect foreign investors from illegal interference by the host government. However, campaigners have argued that such clauses could allow US healthcare investors to force the permanent privatisation of the NHS. Although this view has been rebutted repeatedly by the European Commission and the UK Government, until draft clauses are published, it will be difficult for them to convince those with concerns.

We do not believe that the case has yet been made for ISDS clauses in TTIP. The European Commission is currently consulting Member States on the ISDS provisions. We are deeply concerned that the UK Government is not planning to submit a formal response to that consultation. We disagree with this approach. We argue that a formal response should be submitted and for that response to be made available for public scrutiny. We argue that the inclusion of clauses to dismiss frivolous claims; the exclusion of any clauses which would require the State to pay in all outcomes; and a statement ensuring the right to regulate by Sovereign Nations takes precedence over an investor's right to invest is placed at the heart of the Government's response on ISDS provisions. We urge the Government to ensure that an unequivocal statement guaranteeing the protection of public services at present—and the right to expand them in the future—is set out in any ISDS provisions.

The TTIP negotiations will continue into the next Parliament. We hope that our successor Committee will continue to scrutinise the negotiations as a matter of priority.

1 Introduction

Background

1. The Transatlantic Trade and Investment Partnership (TTIP) is an ambitious attempt by the European Union (EU) and the United States (US) to deliver a comprehensive trade and investment treaty. The main aims of the proposed Partnership are to increase trade and investment between the EU and the US through:

- the reduction of tariffs;
- aligning regulations and standards;
- improving protection for overseas investors; and
- increasing access to services and government procurement markets by foreign providers.¹

2. International trade agreements with the European Union are negotiated by the European Commission. This Mandate is authorised by the Council of Ministers and the European Parliament. The first round of negotiations between the EU and the US took place in July 2013 and the eighth round took place in the first week in February 2015. There are expected to be at least two further rounds in 2015, and it is hoped that a deal could be reached before the end of the year.²

3. Both the UK Government and the European Commission argue that TTIP can deliver significant economic benefits to the Member States of European Union. However, this is not universally supported. Organisations and campaign groups in the United Kingdom and elsewhere in the EU have questioned the economic benefits of TTIP and argue that certain elements of the trade deal could result in significant economic and social detriment.

4. Our inquiry does not aim to cover the full detail of the TTIP negotiations. What we have tried to do is shed some light on those areas of specific interest to the wider public, namely the reported benefits and risks to the UK, the impact on public services—in particular the NHS—and the proposals to include Investor-State Dispute Settlement clauses in the trade agreement. In addition, we comment on the quantity and quality of the information provided on TTIP both by those in favour of it and those who are campaigning against it.

5. In the course of the inquiry we held four evidence sessions and received a number of written submissions. A list of the contributors is contained in this Report.

6. Although we are at the end of the present Parliament, the negotiations on TTIP will continue. We urge our successor Committee, when it is reconstituted, to continue to monitor the TTIP proposals and the negotiation process.

1 www.parliament.uk/business/publications/research/briefing-papers/SN06688/the-transatlantic-trade-and-investment-partnership-ttip

2 Oral Evidence taken before the European Scrutiny Committee on [26 February 2015](#) HC (2014–15)1084

2 What are the benefits of TTIP?

7. The proposals for TTIP have provoked a vigorous debate and our evidence sessions demonstrated that is a very wide range of views on its potential merits. All of our witnesses could see some advantage to be had in an agreement; where they differed was which aspects were beneficial, which were not, and the level of the economic benefit which would be achieved.

8. The British Chambers of Commerce believed there was “hope and optimism about the benefits for jobs and economic growth as a result of the TTIP” but noted that there were “a number of challenges” which would first need to be addressed.³ The CBI also saw benefits in a free trade agreement noting the US was the UK’s largest market outside the eurozone, but despite this, the UK’s export performance in that market had been “extremely poor over these past 20 years”.⁴ TTIP could, the CBI believed have a positive impact on “investment, in terms of growth, jobs and competitiveness”, and was “something worth pursuing in the current economic climate”.⁵ Frances O’Grady, from the TUC, also noted that a deal to reduce tariffs “could genuinely lead to greater trade and greater benefits to all” in sectors such as the automotive and chemicals industries.⁶

9. The campaigning organisation 38 Degrees has run a number of campaigns in opposition to TTIP. However, in evidence to us, David Babbs, its Executive Director, told us that 38 Degrees Members were “certainly not hostile to the idea of any agreements between the UK, the EU and the US” and that overall they had “instincts in favour of international co-operation, in terms of countries working together and having positive relations with each other”.⁷ That said, he reported that 38 Degrees members were concerned about who benefited:

The kinds of things that they are saying are that, for example, “It may help businesses, but there must be proper regulation so that normal people benefit from this business and not find their services and rights eroded in favour of the profit of business owners”.⁸

10. He concluded that the TTIP deal should not be pursued “regardless”, and said that agreement depended on “the content of that deal”.⁹ According to Mr Babbs, a key red line for many 38 Degrees members in this respect was the proposals for Investor State Dispute Settlement clauses, which we consider in more detail later in this Report.

11. Polly Jones from the World Development Movement¹⁰ also saw the potential for benefits in a trade deal but argued that for those benefits to be achieved, an alternative

3 British Chambers of Commerce ([TTI01](#))

4 Q22

5 Q14

6 Q13

7 Q86

8 Q86

9 Q149

10 The World Development Movement has since been renamed as Global Justice Now

trade mandate was necessary which put “working people at the heart of trade agreements, in terms of recouping the benefits”.¹¹ This was also a theme highlighted by Frances O’Grady from the TUC, who saw the litmus test of TTIP as whether it would deliver a “levelling up or levelling down of labour standards”.¹²

Economic benefits

12. Central to the argument in favour of TTIP is that it will bring significant economic benefits to the EU, and in particular to the United Kingdom. On 17 June 2013, at the G8 Summit in Lough Erne, the Prime Minister stated that TTIP could “add as much as £100 billion to the EU economy, £80 billion to the US economy and as much as £85 billion to the rest of the world”.¹³ These figures were restated in the Government’s paper on TTIP, published in July 2014, which highlighted the potential benefit to the UK economy:

An ambitious agreement could strengthen this relationship adding as much as £10 billion annually to the UK economy in the long-term. For individuals, this means more jobs and reduced prices for goods and services.¹⁴

13. This assessment of the economic benefit has been used repeatedly by the proponents of TTIP and was relied upon by Lord Livingston and thirteen other Trade Ministers in a letter to Ms Malmström, Commissioner-designate for Trade:

The Transatlantic Trade and Investment Partnership (TTIP) will add over €100bn to EU GDP and has the potential to transform not just our own economies, but also the global economy.¹⁵

14. These estimates are based on a study by the Centre for Economic Policy Research (CEPR) and its figures have become an established part of the debate on TTIP. The CEPR stated that the benefits could be €119 billion to the European Union. That said, given the lack of detail available on the breadth and depth of any trade agreement, the figures are highly speculative. Polly Jones from the World Development Movement described the figure as “the most optimistic scenario” and suggested that it was unlikely to be achieved:

It makes assumptions, for example that barriers on services and goods, non-tariff barriers, would be liberalised by a further 25%, but on government procurement you might see a liberalisation of 50%. To generate those top-line figures, you have all of these assumptions, and it assumes also that you would be opening up public procurement by 50%, so the figures are best-case scenario, very crude and also a delayed benefit.¹⁶

11 Q89

12 Q23

13 <http://tradeinvest.babinc.org/wp-content/uploads/2014/09/General-Press-Pack-2014-2nd-edition.pdf>

14 www.gov.uk/government/uploads/system/uploads/attachment_data/file/329716/42014-Cm-8907-Transatlantic-trade-and-investment-partnership.pdf

15 [Letter to Commissioner-designate for trade](#)

16 Q68

15. Ms Jones concluded that even this “best case scenario” would not deliver benefits to the United Kingdom until 2027 and would then only benefit a UK family to the level of “about the cost of a packet of fish fingers a week”.¹⁷ She also highlighted the fact that a number of studies suggested that the removal of tariffs would lead to a loss to public funds across the EU of “nearly \$20 billion over 10 years”, and referenced a GMB calculation based on the full liberalisation of TTIP which, she said could cost the UK Exchequer £3.5 billion a year.¹⁸ StopTTIP UK, an “informal, voluntary organisation of people concerned about TTIP”, also argues that the economic assessment:

Fails to identify losses, such as loss of intra -EU trade, the costs of unemployment from loss of tax take and from the cost of unemployment benefit payments, as well as loss of tariff income, and it flags possible reduced exports from Least Developed Countries to the EU.¹⁹

16. By contrast, Ms Roderburg from BritishAmerican Business, a pro-TTIP business lobby, described modelling as an “indication of a trend” and asserted that the projected financial returns were “underestimating the potential benefits of TTIP”.²⁰ Sean McGuire, Brussels Director of the CBI, noted that while it was the “best estimate one can have”, it was not “definitive” as there was insufficient detail to accurately predict the financial benefits of TTIP.²¹

17. Dr Adam Marshall from the British Chambers of Commerce was also sceptical of the estimated benefits as he believed an accurate calculation was “impossible” to calculate. However, he was equally critical of those predicting that TTIP would be bad for the United Kingdom:

Our position is that those who are cheerleading, whether they be in business—particularly multinationals—or the Commission itself, who have those very large numbers, and also those who are very much against this agreement, who warn of hellfire and damnation to come, are probably all in the wrong. It is impossible to put a financial benefit number on TTIP until we know what its content is.²²

18. In November, we took evidence from Dr Gabriel Siles-Brügge, a political analyst whose research has questioned the accuracy of the methodology underpinning the €100 billion figure. He argued that the economic modelling made overly optimistic predictions, and that rather than acting as “a reliable guide to future outcomes” the model served the “pro-liberalisation agenda of the European Commission and other advocates of the TTIP”.²³ In evidence to us, he said that it was “somewhat disingenuous” to present that figure as a reliable estimate,²⁴ because the assumptions were “unrealistic”,²⁵ and made a number of

17 Q68

18 Q126

19 StopTTIP UK ([TTI08](#))

20 Q236

21 Q11

22 Q234

23 [TTIP and the Role of Trade Impact Assessments Managing Fictional Expectations](#)

24 Q153

unreasonable assumptions about the way that the economy worked. As examples, Dr Siles-Brügge highlighted the following erroneous assumptions:

That there will be full employment;

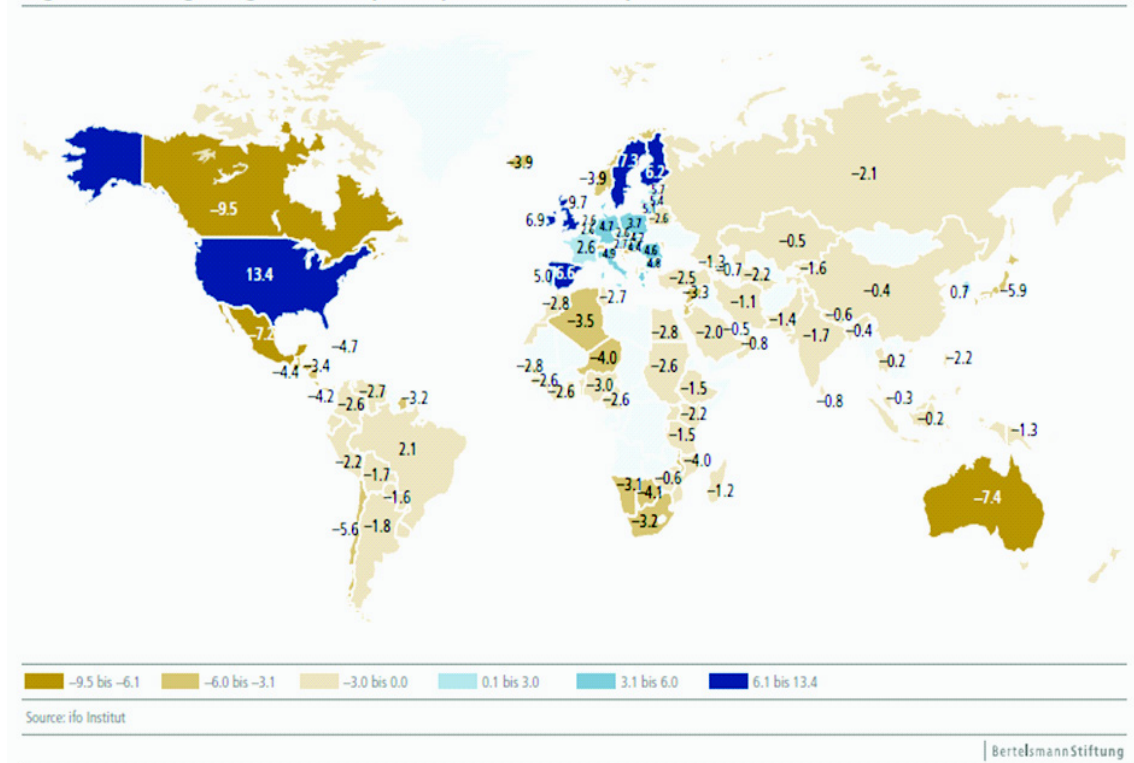
That the economy, after a policy decision such as TTIP, adjusts smoothly from point 1 to point 2 without any social costs in between; and

That individuals are rational optimisers.²⁶

In addition, he described the estimates of reducing non-tariff costs at 17% as over-optimistic, suggesting a lower figure of 3%.²⁷ Dr Siles-Brügge challenged the promoters of TTIP in Government to be ‘intellectually honest’ in that it was not possible to put an accurate figure on the economic benefits.²⁸

19. A study conducted by the Bertelsmann Institute concluded that in the event of a far-reaching deal (so-called deep liberalisation) Canada, Mexico and Australia could suffer GDP losses ranging from 7–10%. By contrast the United Kingdom would be the second biggest beneficiary of such a deal. [See graph below.]

Figure 8: Change in global real per capita income, deep liberalization



25 Q154

26 Q157

27 Q159

28 Q192

20. When we challenged the Minister on the accuracy of the estimated benefits of TTIP, he appeared to agree that they should not be taken as fact. In doing so he quoted JK Galbraith, who said that the only purpose of economic forecasts was to make astrology look respectable.²⁹ In that vein, he acknowledged that the letter he co-signed with other Trade Ministers would have been better with the following caveat:

The normal phraseology I tend to use is “An ambitious agreement could add £10 Billion to the UK economy” but I would say, of course, it could be higher and it could be lower.³⁰

21. Sean McGuire said that the CBI believed that “companies of all sizes and from all sectors” could benefit,³¹ but told us that it had not yet conducted “a sector by sector analysis” of those gains.³² Allie Renison from the IoD agreed that a sectoral analysis of the economic benefits was “really important” but cautioned that many trade associations “do not have the resources to carry out huge sector-by-sector analyses”.³³ Adam Marshall from the British Chambers of Commerce said that the BCC would not consider commissioning research among business communities until there was greater detail and certainty on what was being proposed.³⁴ BritishAmerican business confirmed that there was “currently no comprehensive study available that assesses the potential benefits of TTIP for United Kingdom (UK) regions and sectors”. However, it noted that a number “anecdotal and sector based assessments” had been conducted by trade associations and companies for the All Party Parliamentary Group (APPG) on EU-US trade which were available on the BAB’s website.³⁵ This sector by sector review was something that the TUC also would welcome.³⁶

22. Whilst TTIP has the potential to deliver economic benefits to the United Kingdom, it is impossible at this stage to quantify those benefits in any meaningful way. Rather than continue to use the £100 billion figure, the Government must come up with a comprehensive assessment which includes the estimated economic yield of a variety of levels of agreement.

23. We further recommend that this assessment sets out the potential benefits and risks on a sector by sector basis, so that each area of our economy can better understand the impact of a trade deal.

29 Q344

30 Q346

31 Q14

32 Q16

33 Q255

34 Q243

35 BritishAmerican Business ([TTI13](#)) and BAB: [website](#)

36 Q13

3 Investor State Dispute Settlement

Existing investor state clauses and international arbitration

24. Investor State Dispute Settlement (ISDS) provisions allow foreign investors to bring proceedings against a government that is party to a trade treaty. Any case is heard at an international court rather than using the domestic legal system. The rationale for this is that it provides investors with a greater level of certainty that their claims would be adjudicated in an impartial manner. If a government is found to be in breach of its treaty obligations, the harmed investor would be able to receive monetary compensation or other forms of redress.

25. ISDS provisions are not new and are normally found in bilateral investment treaties (BITs). When he came before us, the Minister said that the UK had 94 existing ISDS agreements and in that period, which he aggregated to cover “2,000 years”, the United Kingdom had not lost a single case.³⁷ The extent of ISDS provisions in existing trade agreements was also highlighted by the Chartered Institute of Arbitrators (CI Arb):

The existing network of 1400 European Bilateral Treaties (BITs)—all of which include ISDS—already provide good protection to many European investors. These include 8 existing BITs between EU Member States and the US. The UK itself has negotiated 94 Bilateral Investment Treaties (BITs), the majority of which include ISDS provisions, with no ISDS challenge succeeding against the UK. CI Arb is aware that the size of TTIP, as well as the active public debate surrounding the inclusion of ISDS, has raised concerns about the protection system. This system has served citizens and investors well.

26. However, there are concerns around the extent to which ISDS provisions go further than merely protecting a company’s investment. In particular, there are concerns that ISDS can give a foreign investor grounds for redress should a Government change or reverse decisions on the delivery of public services. If these concerns are correct, such provisions could inhibit the legitimate work of Government by creating a “regulatory chill” in which governments are too fearful of ISDS to regulate in the provision of publicly funded services. An example of this is the action taken by Philip Morris Inc. against the Australian Government for its policy to introduce plain packaging for cigarettes. According to our witnesses, this action is being pursued through an Investor State agreement between Australia and Hong Kong and Philip Morris Inc. has established an office in Hong Kong so it can use the ISDS clauses.³⁸

27. In order to gain a better understanding of the existing investor/state disputes system we took evidence from Professor Sir David Edward KCMG, QC, PC, LL.D., Drhc, FRSE, Professor Emeritus, University of Edinburgh in his capacity as an arbiter at the International Centre for Settlement of Investment Disputes (ICSID). He explained that the

37 Q368

38 Q111

ICSID was set up under the auspices of the World Bank in the 1960s in order to assist the promotion of investment into less developed nations. It was conceived as an answer to complaints from foreign investors about the way they were treated by the host countries, in particular those emerging democracies with underdeveloped legal systems.

28. Sir David explained that at that time there were only two methods by which investors could get remedies: to sue in the courts of the host country, which many considered to be unsatisfactory, or to invoke what was called “diplomatic protection under international law”.³⁹ Under the latter the country of the investor “would seek a remedy under international law against the host country of the investment”. ICSID was established as a system for conciliation and arbitration of those disputes.⁴⁰ In most cases the investment dispute provisions contain “a definition of who is to be considered an investor and what is to be considered an investment”. If the investor and the investment falls within that treaty’s definition, then any dispute would be within the jurisdiction of the ICSID.

Proposals for Investor State Dispute Settlement in TTIP

29. Much concern about TTIP has centred on ISDS, including a wide range of public campaigns. Those campaigns argue that ISDS would undermine the power of national governments to act in the interest of their citizens.⁴¹ In particular, it is claimed that as a result of ISDS proposals in the TTIP, measures to open up the NHS to competition would be made irreversible and that US companies could sue for compensation in the event of a future change of policy to bring public services back into public hands. Other examples include the possibility of US oil companies challenging environmental regulations on fracking and genetically modified organisms.⁴²

30. In response to the concerns the European Commission suspended negotiations and ran a public consultation on the ISDS proposals. The Commission received over 150,000 responses of which more than a third came from the United Kingdom. According to the Commission’s response (published on 15 January 2015) around 145,000 (or 97%), of the responses were submitted collectively through various on-line platforms containing pre-defined answers which respondents adhered to. Of the remainder, the Commission received replies from around 3,000 individual citizens and 450 organisations representing “a wide spectrum of EU civil society (business organisations, trade unions, consumer organisations, law firms, academics, etc.)”.⁴³

31. Commenting on that consultation, the Minister described 97% of the responses as “standard”. He acknowledged the validity of some concerns on ISDS but argued that the debate should be focussed not on “Is ISDS good or bad?”, but, “What should be an ISDS, and what should not be?”

39 Q197

40 Q197

41 See evidence from 38 Degrees and World Development Movement, etc.

42 www.parliament.uk/briefing-papers/sn06688.pdf

43 http://europa.eu/rapid/press-release_IP-15-3201_en.htm

32. The responses did not provide a clear steer and therefore the European Commission has decided to further consult EU stakeholders, the EU Member States and the European Parliament on the following areas, as part of a wider debate on investment protection and ISDS:

- the protection of the right to regulate;
- the establishment and functioning of arbitral tribunals;
- the relationship between domestic judicial systems and ISDS; and
- the review of ISDS decisions through an appellate mechanism.⁴⁴

The Commission concluded that this further consultation would help it develop “concrete proposals for the TTIP negotiations”.⁴⁵

Are ISDS provisions necessary?

33. Dr Marshall, from the British Chambers of Commerce, was sceptical of the need for ISDS clauses in the TTIP. He did not see why the domestic legal systems of “a group of very advanced industrialised democratic countries” were not able to settle such disputes, and had not heard a convincing answer to the contrary.⁴⁶ Frances O’Grady agreed:

Our concern is why they cannot use the domestic courts like anybody else. Why do they need a special and what has been largely secret court to secure their investments and secure against potential loss of future profits?⁴⁷

Frances O’Grady concluded by saying that the simple approach would be to “scrap” ISDS.⁴⁸ According to Allie Renison, the IoD would also support a trade deal without ISDS clauses.⁴⁹

34. However, Sean McGuire, representing the CBI, argued that ISDS provisions were necessary in order to deliver a “speedier and more harmonised” approach than having to use domestic courts and he highlighted Italy as an example of a Member State that had a “very slow” legal process.⁵⁰ Elisabeth Roderburg, speaking for BritishAmerican Business, said her organisation had not “taken a stand” on ISDS.⁵¹ However, she went on to argue that the underlying reason for the inclusion of ISDS provisions in TTIP was less about their importance “in a US-EU context”, and more about a “question of precedents” with respect

44 http://trade.ec.europa.eu/doclib/docs/2015/january/tradoc_153044.pdf page 4

45 http://trade.ec.europa.eu/doclib/docs/2015/january/tradoc_153044.pdf page 4

46 Q265

47 Q32

48 Q34

49 Q272 to 276

50 Q49

51 Q278

to trade deals with countries such as China. This argument was also put forward by Lord Livingston.⁵²

35. It should be noted, however, that the absence of ISDS clauses does not in itself remove any threat of a dispute impacting on public policy. BritishAmerican Business pointed out that if a domestic court was used to resolve a case, that court “could conclude that the measure taken by Government is discriminatory or an expropriation is unlawful and the policy needs to be changed”. This is not the case in an international tribunal which, according to BritishAmerican Business “cannot require that a Government change its policy” as it “can only award compensation for an action that has been taken”.⁵³ The Minister confirmed this position when he gave evidence to us: “ISDS can only be about compensation; it can be about nothing else”.⁵⁴

What should be included in ISDS provisions?

The State always pays

36. The World Development Movement has argued that under the ISDS proposals, States would be obliged to pay costs regardless of whether they won or lost an ISDS case.⁵⁵ We stress that it is not yet clear whether such provisions are being considered as part of the negotiation but we considered it important to ask other witnesses for their views on the desirability of such an approach. Elisabeth Roderburg, from BritishAmerican Business, did not think that the BAB had come to a conclusion on the issue, although its subsequent written evidence stated that:

We are aware that in many domestic legal systems the ‘loser pays principle’ is an accepted discipline. It would not be unusual for the EU to follow a similar approach in TTIP.⁵⁶

37. The IoD said that it was “one area that they are looking at under the areas they have identified for reform of ISDS”,⁵⁷ while Sean McGuire from the CBI said that his organisation “could look at the possibility of making a loser pay principle for an ISDS”.⁵⁸

38. We also questioned Sir David Edward on this matter. He said that he had heard of the possibility of ISDS requiring that the State always pays, but added that this was not the case with ICSID as the ICSID convention and the ICSID rules state clearly that it is “for the tribunal to determine who shall pay the costs”.⁵⁹

39. It is disappointing that BritishAmerican Business, the CBI and the IoD are so cautious about signing up to a ‘loser pays’ principle in ISDS cases.

52 Oral Evidence taken by the European Scrutiny Committee on Thursday 26 February, [Q63](#)

53 BritishAmerican Business, [TT113](#)

54 Q377

55 http://issuu.com/wdmuk/docs/ttip_briefing/2?e=2770376%2F7698139

56 BritishAmerican Business ([TT113](#))

57 Q285

58 Q44

59 Q207

Frivolous claims

40. In its response to the initial Commission consultation, BritishAmerican Business was unambiguous in its view on frivolous claims: “We believe that TTIP should have no provisions on so-called “frivolous” claims”.⁶⁰ However, when we questioned Ms Roderburg on the rationale for taking such a strict view she declined to give a view stating that she would “prefer that we get back to you in writing”.⁶¹ Supplementary Evidence from BAB restated the BAB’s position as set out in its consultation response and argued that:

We believe that improved ISDS provisions in TTIP should adequately qualify tribunals to distinguish between frivolous claims and the material ones based on the definitions used in the negotiated text. That should help to considerably discourage any attempt to bring a frivolous claim.⁶²

41. By contrast, Lord Livingston was in favour of clauses to remove frivolous claims and argued that any treaty with ISDS clauses could have “mechanisms to try to kick out [frivolous claims] as quickly as possible”.⁶³

42. *We recommend that should ISDS provisions be included in TTIP, that they include clauses to remove frivolous claims.*

Right to invest vs right to regulate

43. Sir David Edward said that the current criticism of TTIP in terms of the impact on States had some “basis or justification” as there had been cases between US corporations and some of the South American republics where disputes had arisen as a result of action taken by countries when faced with an economic crisis. In other words, investors had pursued States for compensation for regulatory change intended to address immediate economic difficulties. However, he argued that this would not have occurred had the bilateral investment treaty had a protective clause in that respect.

44. On the balance between the rights of the state and those of the investor, Lord Livingston said:

I think it is a balance. [...] The right to regulate should be the Government’s right and the right to invest with the company, and I do not think we should have a situation where one trumps another. The right to regulate has to be in the sovereign Government.⁶⁴

60 <http://tradeinvest.babinc.org/wp-content/uploads/2014/07/BAB-BABC-Investment-Protection-and-ISDS-in-TTIP-July-11-2014.pdf>

61 Q294

62 BritishAmerican Business ([TT113](#))

63 Q385

64 Q387

45. In terms of its impact on Government policy, the Minister was clear about the reach of ISDS:

You cannot use ISDS to change Government policy. It cannot override. That is in the hands of sovereign Parliaments.⁶⁵

He went on to say that assertions that TTIP would force publicly provided services into the private sector were “completely untrue”.⁶⁶

NHS and public services

46. At the heart of many concerns about TTIP and ISDS is the impact it could have on public services, and in particular the NHS. Many campaigners have argued that TTIP would open up the NHS to challenge by US private healthcare providers and inevitably lead to irrevocable privatisation.

47. In July 2014, the European Commission wrote to John Healey MP, the Chair of the All-Party Parliamentary Group on TTIP, setting out the Commission’s view on the impact of TTIP on the NHS. The letter concluded:

We can already state with confidence that any ISDS provisions in TTIP could have no impact on the UK’s sovereign right to make changes to the NHS.

I hope that this information clearly demonstrates that there is no reason to fear either for the NHS as it stands today, or for changes to the NHS in future, as a result of TTIP.⁶⁷

48. While this response was helpful, it did not satisfy the concerns of all who held deep concerns about TTIP. For example, Keep Our NHS Public, a campaigning organisation wrote saying that the implication that the NHS could be “carved out” of the treaty did not go far enough because “any attempt to reverse the privatisation of the NHS” would allow US healthcare providers who have entered the NHS ‘market’ to “sue any UK government for expropriation, with the chance of winning compensation substantial enough to threaten the UK’s financial stability”.⁶⁸ On 11 December 2014, Jean-Luc Demarty, Director General for Trade, wrote to the Chair of the Health Committee responding to a series of questions on the impact of TTIP on the NHS. That letter went further than the response to Mr Healey and gave the following statement in respect of ISDS and publicly funded services:

We explicitly exclude services supplied in the exercise of governmental authority: this exception is valid and is significant for a number of public services (e.g. justice, policing).

65 Q377

66 Q388

67 http://media.hotnews.ro/media_server1/document-2014-07-14-17668727-0-scrisoarea-lui-ignacio-bercerro.pdf

68 Keep our NHS Public ([TTI09](#))

Beyond this, in all its trade agreements the EU then takes a broad horizontal reservation which reserves the right to have monopolies and exclusive rights for public utilities in EU Member States at all levels of government.

In addition, the EU retains very broad sectoral reservations in its trade agreements for public services (public education, public health and social services, and water). This means that public authorities at all levels do not have to treat foreign companies or individuals the same way as EU ones and do not have to provide access to their markets.⁶⁹

49. When he gave evidence to us, the Minister reconfirmed and supported this position:

I fully support the EU on this matter. We are at one. There is nobody saying otherwise. I do not understand where this notion that it is going to be otherwise comes from. The EU is saying the same; the US is saying the same; the British Government is saying the same. The NHS will not be affected and nobody is asking for it to be.⁷⁰

50. Kate Ling, Senior European Policy Manager, NHS European Office, NHS Confederation described the letter of 11 December as “reassuring letter” and confirmed that it went further than the response to the John Healey letter:

I think it makes it quite clear that [...] publicly funded health services should be reserved, so that is helpful and reassuring. I think, also, the Commission’s recent efforts at greater transparency with regard to negotiations are helpful, though they could perhaps still go a bit further, and their recent response to the public consultation on ISDS. There is an awful lot to play for there, and it is still, obviously, very unclear whether or not ISDS will form part of the final TTIP agreement, and if it does, what sort of ISDS provisions they will be. The clear implication of the Commission’s latest document is that if there are ISDS provisions, they will, hopefully, be very different ISDS provisions from the ones that have been seen in previous trade agreements.⁷¹

However, Kate Ling cautioned that it was difficult to give a definitive view in the absence of a text and that more information was necessary in order to make a more accurate assessment of the impact.⁷²

51. It is impossible for us to make a definitive statement until a final text of the draft provisions are published although we welcome the repeated statements given by both the European Commission and the UK Government that public services—including the NHS—will be unaffected by TTIP. However, we are aware that not all campaigners will accept these statements at face value. We recommend that the Government, in its response to the Commission’s consultation, ensures that an unequivocal statement protecting public services at present—and the right to expand them in the future—is set

69 www.parliament.uk/documents/commons-committees/Health/Health-Committee-TTIP-correspondence.pdf

70 Q389

71 Q316

72 Q328

out in any ISDS provisions. We further recommend that those draft provisions are made public, in advance of final decision, so that they can be subject to public scrutiny.

European Commission consultation on ISDS

52. Earlier in this section we noted that the European Commission is currently consulting Member States on ISDS. This next stage of the consultation offers an opportunity for Governments to further improve or amend the relevant clauses. Lord Livingston told us that the Government would take “an open view about what is contained within ISDS clauses”,⁷³ and that the consultation would offer the opportunity to see “what further things we might include in the agreement with the US, in terms of making sure that these concerns are assuaged”.⁷⁴ The Minister noted that the recent trade agreement with Canada (CETA) provided a good starting point in terms of refining ISDS provisions. “CETA had a lot of steps forward. We are now looking to see what CETA plus might look like and whether we can create the right standard of a future ISDS agreement.”⁷⁵

53. However, when he was questioned by the European Scrutiny Committee on the consultation Lord Livingston said that while the UK would “contribute via the Council and give our views and feedback on ISDS in general” there was “not going to be a formal response to the EU”.⁷⁶

54. By undertaking to consult with Member States, the European Commission has given EU Countries the opportunity to reshape the negotiating mandate on ISDS clauses. We have yet to be convinced of the need for ISDS provisions in TTIP. The UK Government and the EU must demonstrate that the advanced legal institutions of the EU and the US cannot protect foreign investors before any ISDS is considered in the TTIP.

55. Should ISDS provisions be included in TTIP, we believe that the following conditions will need to be necessary:

- *the inclusion of clauses to dismiss frivolous claims;*
- *the exclusion of any clauses which would require the State to pay in all outcomes and a presumption that the loser should pay; and*
- *the inclusion of a statement the right to regulate by Sovereign Nations take precedence over an investors right to invest is placed at the heart of ISDS provisions.*

56. We are deeply concerned by the Minister’s statement that there will not be any formal response by the Government to the European Commission’s consultation on ISDS with Member States. It does not give the impression that the Government is treating seriously the concerns that have been raised about the range or use of such clauses and serves only to fuel the existing scepticism held by opponents of TTIP. It also has the potential to leave

73 Q369

74 Q365

75 Q369

76 Oral Evidence taken before the European Scrutiny Committee on [26 February 2015](#) HC (2014–15)1084

the UK on the margins of any debate to better frame ISDS negotiations. We recommend that the Government produces a formal response to the consultation exercise and for it to be published at the same time it is submitted to the European Commission.

4 The debate on TTIP

57. It is clear that the TTIP negotiations have inspired extensive debate within Parliament and outside; and have been subject to a number of European Commission consultations. However, not all of the debate or opinion has been based on evidence. We are concerned that there has been an oversimplification and misrepresentation of arguments on both sides. When we discussed the quality of debate with Lord Livingston claimed that at times, the debate could be characterised as “the well-informed but ill-minded are misleading the ill-informed but well-minded”.⁷⁷ We believe this applies to both sides of the argument.

58. The European Commission and the UK Government must shoulder some of the blame as the level of information originally available to the public was minimal. When he came before us the Minister acknowledged that a greater level of transparency was necessary and that this was now being addressed. He told us that he wanted to see “a wider distribution to MPs” of information relating to TTIP and to gain equivalent access rights to information enjoyed by MEPs. He also highlighted a number of resources which had already been made available to Members of Parliament and stressed that he was focussed on “being very clear about the facts”, and would “concentrate on the genuine issues that there are in such a complex trade agreement”.⁷⁸

59. Outside of Parliament, the availability of and access to information is irregular. When we took oral evidence our scrutiny was, on occasion, frustrated by the information given by our witnesses. In our first evidence session, David Babbs, Executive Director of 38 Degrees, was asked about the information 38 Degrees made available to its members. The example of the correspondence between John Healey MP and the European Commission on the impact of TTIP on the NHS was raised and Mr Babbs told us that it had been put on the 38 Degrees website together with a critique of how much of the NHS operates in the private sector.⁷⁹ However, in supplementary evidence, he acknowledged that this was incorrect.⁸⁰ We also asked him about a 38 Degrees article entitled “the ten things you need to know” about TTIP. That article included the headlines “Goodbye NHS, hello permanent privatisation” and “Imagine a world where the profits of healthcare companies decide how we help the sick and the elderly”.⁸¹

60. We were concerned by this article because the level of certainty in it did not, in our view, closely reflect the evidence we had received. In evidence, David Babbs told us that he “had not seen” the article and repeatedly told us that it was put up by someone outside his organisation. However, in supplementary evidence, Mr Babbs acknowledged that this was incorrect and that the article had been written by a 38 Degrees staff member.⁸²

77 Q396

78 Q396

79 Q79

80 38 Degrees [TTI04](#)

81 https://secure.38degrees.org.uk/pages/ttip_more_information

82 38 Degrees [TTI04](#)

61. In a subsequent evidence session, BritishAmerican Business (BAB), a lobby organisation in favour of TTIP, was questioned on its submission to the European Commission on ISDS provisions. The organisation describes itself as “the leading transatlantic business organization, dedicated to helping companies connect and build their business on both sides of the Atlantic”.⁸³ It also provides the secretariat for the APPG on TTIP.⁸⁴ We therefore expected it to be well-briefed and in a position to offer an informed and detailed assessment of TTIP. This was not the case. When its representatives gave evidence to us they appeared incapable or unwilling to elaborate on its publicly stated views on TTIP. When we questioned the BAB on its ISDS submission to the European Commission, the responses were “I would ask that we could respond in writing”, “I would ask that we could get back to you in writing on that” and “I would prefer that we get back to you in writing on any specific questions on that contribution to the consultation”. BAB’s subsequent written evidence shed little, if any, further light on any of the issues it sought to defer in the evidence session.⁸⁵

62. We are not the only Committee to have considered proposals for a TTIP. In the House of Commons, the Environmental Audit Committee published a Report on the environmental impact of TTIP,⁸⁶ while the European Scrutiny Committee has also been taking evidence from Lord Livingston on the matter.⁸⁷ In addition, the House of Lords European Union Committee also published a Report on TTIP in May 2014.⁸⁸ The evidence provided to these Committees by outside organisations and the Government, should help to increase the amount of information available for the UK public to consider. However, that will only be the case if organisations engage fully. It is also the case that Government needs to share a greater amount of information with these organisations so that the wider public can be better informed.

63. *38 Degrees has an extensive membership, which it encourages to become active in all areas of society. It therefore can have a significant impact on debate. We encourage 38 Degrees to highlight this Report in its entirety, alongside those of the other Parliamentary Committees, to its membership so that the debate on TTIP can be moved forward.*

64. *BritishAmerican Business is a well-funded and vocal advocate of a trade deal. It therefore has a responsibility to engage fully in the debate on TTIP and not cherry-pick those areas it will and will not engage with.*

65. *We welcome the Ministers ambition to share more information and detail on TTIP with Members of Parliament and we recommend that Government continues to engage with all interested Parliamentary Committees. However, we do not believe this goes far enough. We recommend that the Department actively signposts information to all organisations involved in either supporting or opposing TTIP.*

83 www.babinc.org/aboutus

84 <http://tradeinvest.babinc.org/ttip/all-party-parliamentary-group/>

85 BritishAmerican Business (TTI13)

86 Environmental Audit Committee, Ninth Report of Session 2014–15, [Environmental risks of the Trans-Atlantic Trade and Investment Partnership](#), HC857

87 Oral Evidence taken before the European Scrutiny Committee, [11 June 2014](#) HC 292 (Session 2013–14) and [26 February 2015](#) HC 1084 (2014–15)

88 House of Lord European Union Committee, Fourteenth Report [The Transatlantic Trade and Investment Partnership](#), HL179

5 Conclusion

66. The negotiation process for TTIP is on-going and much of the detail has yet to be either agreed or made public. It is therefore not possible to come to a definitive conclusion on the benefits or risks of an extensive trade agreement between the EU and the US. Unfortunately, in the absence of that detail or undertakings that negotiating texts will be made public, the debate on the trade agreement has become polarised. The current European Trade Commissioner, Ms Malmström, is moving the European Commission in the right direction by making more information public. However, too much detail remains beyond public scrutiny. TTIP has the potential to have a significant impact on the UK economy, on jobs and on public services but the debate on it so far has been marked by too much “dog-whistle” politics on each side. Everyone involved in the debate on TTIP—campaigners, lobbyists, business groups, the UK Government and the European Commission—must ensure that an evidence-based approach is taken.

67. When our successor Committee revisits this matter, we hope that those on all sides of the argument will take a more considered approach to the benefits and risks attached to a trade treaty between the EU and the US.

Conclusions and recommendations

Background

1. Although we are at the end of the present Parliament, the negotiations on TTIP will continue. We urge our successor Committee, when it is reconstituted, to continue to monitor the TTIP proposals and the negotiation process. (Paragraph 6)

Economic benefits

2. Whilst TTIP has the potential to deliver economic benefits to the United Kingdom, it is impossible at this stage to quantify those benefits in any meaningful way. Rather than continue to use the £100 billion figure, the Government must come up with a comprehensive assessment which includes the estimated economic yield of a variety of levels of agreement. (Paragraph 22)
3. We further recommend that this assessment sets out the potential benefits and risks on a sector by sector basis, so that each area of our economy can better understand the impact of a trade deal. (Paragraph 23)

Investor State Dispute Settlement

4. It is disappointing that BritishAmerican Business, the CBI and the IoD are so cautious about signing up to a 'loser pays' principle in ISDS cases. (Paragraph 39)
5. We recommend that should ISDS provisions be included in TTIP, that they include clauses to remove frivolous claims. (Paragraph 42)

NHS and public services

6. It is impossible for us to make a definitive statement until a final text of the draft provisions are published although we welcome the repeated statements given by both the European Commission and the UK Government that public services—including the NHS—will be unaffected by TTIP. However, we are aware that not all campaigners will accept these statements at face value. We recommend that the Government, in its response to the Commission's consultation, ensures that an unequivocal statement protecting public services at present—and the right to expand them in the future—is set out in any ISDS provisions. We further recommend that those draft provisions are made public, in advance of final decision, so that they can be subject to public scrutiny. (Paragraph 51)

European Commission consultation on ISDS

7. By undertaking to consult with Member States, the European Commission has given EU Countries the opportunity to reshape the negotiating mandate on ISDS clauses. We have yet to be convinced of the need for ISDS provisions in TTIP. The UK Government and the EU must demonstrate that the advanced legal institutions of the EU and the US cannot protect foreign investors before any ISDS is considered in the TTIP. (Paragraph 54)

8. Should ISDS provisions be included in TTIP, we believe that the following conditions will need to be necessary:
 - the inclusion of clauses to dismiss frivolous claims;
 - the exclusion of any clauses which would require the State to pay in all outcomes and a presumption that the loser should pay; and
 - the inclusion of a statement the right to regulate by Sovereign Nations take precedence over an investors right to invest is placed at the heart of ISDS provisions. (Paragraph 55)
9. We are deeply concerned by the Minister's statement that there will not be any formal response by the Government to the European Commission's consultation on ISDS with Member States. It does not give the impression that the Government is treating seriously the concerns that have been raised about the range or use of such clauses and serves only to fuel the existing scepticism held by opponents of TTIP. It also has the potential to leave the UK on the margins of any debate to better frame ISDS negotiations. We recommend that the Government produces a formal response to the consultation exercise and for it to be published at the same time it is submitted to the European Commission. (Paragraph 56)

The debate on TTIP

10. 38 Degrees has an extensive membership, which it encourages to become active in all areas of society. It therefore can have a significant impact on debate. We encourage 38 Degrees to highlight this Report in its entirety, alongside those of the other Parliamentary Committees, to its membership so that the debate on TTIP can be moved forward. (Paragraph 63)
11. BritishAmerican Business is a well-funded and vocal advocate of a trade deal. It therefore has a responsibility to engage fully in the debate on TTIP and not cherry-pick those areas it will and will not engage with. (Paragraph 64)
12. We welcome the Ministers ambition to share more information and detail on TTIP with Members of Parliament and we recommend that Government continues to engage with all interested Parliamentary Committees. However, we do not believe this goes far enough. We recommend that the Department actively signposts information to all organisations involved in either supporting or opposing TTIP. (Paragraph 65)

Formal Minutes

Tuesday 17 March 2015

Members present:

Mr Adrian Bailey, in the Chair

Mr William Bain
Mr Brian Binley
Paul Blomfield
Katy Clark
Mike Crockart

Caroline Dinenage
Rebecca Harris
Ann McKechin
Robin Walker
Nadhim Zahawi

Draft Report (*Transatlantic Trade and Investment Partnership*), proposed by the Chair, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 67 read and agreed to.

Summary agreed to.

Resolved, That the Report be the Eleventh Report of the Committee to the House.

Ordered, That the Chair make the Report to the House.

Ordered, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

[Adjourned till Tuesday 17 March at 2.00 pm]

Witnesses

The following witnesses gave evidence. Transcripts can be viewed on the Committee's inquiry page at www.parliament.uk/bis.

Tuesday 25 November 2014

Question number

Frances O'Grady, General Secretary, TUC, and **Sean McGuire**, Brussels Director, CBI [Q1-57](#)

David Babbs, Executive Director, 38 Degrees, and **Polly Jones**, Head of Campaigns and Policy, World Development Movement [Q58-152](#)

Tuesday 16 December 2014

Dr Gabriel Siles-Brügge, Lecturer in Politics, University of Manchester [Q153-195](#)

Professor Sir David Edward KCMG, QC Professor Emeritus, University of Edinburgh [Q196-233](#)

Tuesday 20 January 2015

Allie Renison, Head of Europe and Trade Policy, Institute of Directors, **Elisabeth Roderburg**, TTIP Adviser, and **Emanuel Adam**, Policy and Public Affairs Manager, British American Business, and **Dr Adam Marshall**, Executive Director of Policy and External Affairs, British Chambers of Commerce [Q233-310](#)

Kate Ling, Senior European Policy Manager-NHS European Office, NHS Confederation [Q311-330](#)

Wednesday 28 January 2015

Lord Livingston, Minister of State for Trade and Investment, and **Edward Barker**, Head of Transatlantic and International Unit, Department for Business, Innovation and Skills [Q331-401](#)

Published written evidence

The following written evidence was received and can be viewed on the Committee's inquiry web page at www.parliament.uk/bis. INQ numbers are generated by the evidence processing system and so may not be complete.

- 1 38 Degrees ([TTI0004](#))
- 2 BritishAmerican Business ([TTI0013](#))
- 3 British Chambers of Commerce ([TTI0001](#))
- 4 Chartered Institute of Arbitrators ([TTI0010](#))
- 5 Anneliese Dodds MEP And Jude Kirton-Darling MEP ([TTI0014](#))
- 6 EFILA ([TTI0012](#))
- 7 Professor K D Ewing and John Hendy QC ([TTI0007](#))
- 8 Keep Our NHS Public ([TTI0009](#))
- 9 David Malone and Neil McDougall ([TTI0003](#))
- 10 David Malone and Neil McDougall ([TTI0011](#))
- 11 StopTTIP UK ([TTI0008](#))
- 12 University and College Union (UCU) ([TTI0002](#))

List of Reports from the Committee during the current Parliament

All publications from the Committee are available on the Committee's website at www.parliament.uk/bis.

The reference number of the Government's response to each Report is printed in brackets after the HC printing number.

Session 2014–15

First Report	Royal Mail Privatisation	HC 539-I/II
Second Report/First Joint Report	Scrutiny of the Government's UK Strategic Export Controls Annual Report 2012, the Government's Quarterly Reports from October 2012 to September 2013, and the Government's policies on arms exports and international arms control issues	HC 186
Third Report	Student Loans	HC 558 (HC 777)
Fourth Report	The Implications for Scottish Independence on Business; Higher Education and Research; and Postal Services	HC 504
Fifth Report	Adult Literacy and Numeracy	HC 557 (Cm 8982)
Sixth Report	The Extractive Industries	HC 188(HC 969)
Seventh Report	Business-University Collaboration	HC 249
Eighth Report	Government Support for Business	HC 770
Ninth Report	Competition in the Postal Services sector and the Universal Service Obligation	HC 769
Tenth Report/ Second Joint Report	Scrutiny of Arms Exports and Arms Control (2015): Scrutiny of the Government's UK Strategic Export Controls Annual Report 2013, the Government's Quarterly Reports from October 2013 to June 2014, and the Government's policies on arms exports and international arms control issues	HC 608
Eleventh Report	Transatlantic Trade and Investment Partnership	HC 804

Session 2013–14

First Report	Women in the Workplace	HC 342-I/II/III(Cm 8701)
Second Report/First Joint Report	Scrutiny of Arms Exports and Arms Control (2013): Scrutiny of the Government's UK Strategic Export Controls Annual Report 2011 published in July 2012, the Government's Quarterly Reports from October 2011 to September 2012, and the Government's policies on arms exports and international arms control issues	HC 205
Third Report	The Kay Review of UK Equity Markets and Long-term Decision Making	HC 603(HC 762)
Fourth Report	Consultation on a Statutory Code for Pub Companies	HC 314
Fifth Report	Open Access	HC 99-I/II(HC 833)

Sixth Report	Draft Consumer Rights Bill	HC 697-I/II/III
Seventh Report	Payday Loans	HC 789

Session 2012–13

First Report	The Hargreaves Review of Intellectual Property: Where Next?	HC 367-I/II(HC 579)
Second Report/First Joint Report	Scrutiny of Arms Export Controls (2012): UK Strategic Export Controls Annual Report 2010, Quarterly Reports for 2010 and January to September 2011, the Government's review of arms exports to the Middle East and North Africa, and wider arms control issues	HC 419
Third Report	Post Office Network Transformation	HC 84(HC 678)
Fourth Report	Overseas Students and Net Migration	HC 425(Cm 8557)
Fifth Report	Apprenticeships	HC-I/II/III(HC 899)
Sixth Report	The Insolvency Service	HC 675 (HC 1115)
Seventh Report	Too Little, Too Late: Committee's observations on the Government Response to the Report on Overseas Students and Net Migration	HC 1015(Cm 8622)
Eighth Report	Pre-appointment hearing of the Government's preferred candidate for the post of Groceries Code Adjudicator	HC 1011
Ninth Report	Local Enterprise Partnerships	HC 598

Session 2010–12

First Report	The New Local Enterprise Partnerships: An Initial Assessment	HC 434 (HC 809)
Second Report	Sheffield Forgemasters	HC 484 (HC 843)
Third Report	Government Assistance to Industry	HC 561
Fourth Report / First Joint Report	Scrutiny of Arms Export Controls (2011): UK Strategic Export Controls Annual Report 2009, Quarterly Reports for 2010,licensing policy and review of export control legislation	HC 686
Fifth Report	Government Assistance to Industry: Government Response to the Committee's Third Report of Session 2010–11	HC 1038
Sixth Report	Is Kraft working for Cadbury?	HC 871
Seventh Report	Rebalancing the Economy: Trade and Investment	HC 735 (HC 1545)
Eighth Report	Trade and Investment: China	HC 1421 (HC 1568)
Ninth Report	Time to bring on the referee? The Government's proposed Adjudicator for the Groceries Code	HC 1224-I
Tenth Report	Pub Companies	HC 1369-I/II (Cm 8222)
Eleventh Report	Time to bring on the referee? The Government's proposed Adjudicator for the Groceries Code: Government Response to the Committee's Ninth Report of Session 2010-12	HC 1546
Twelfth Report	Government reform of Higher Education	HC 885-I/II/III (HC 286)

Thirteenth Report	Pre-Appointment Hearing: Appointment of Director of the Office for Fair Access	HC 1811
Fourteenth Report	Debt Management	HC 1649 (HC 301)
Fifteenth Report	Stamp Prices	HC 1841-I/II